IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.274 OF 2006

Vasu Ponkra Shetty ...Appellant
Vs.
The Municipal Corpn.of Gr.Mumbai ...Respondent

Shri Dharam i/by Dharam & Co. for the Appellant.

Shri J.J. Xavier for the Respondent.

CORAM : A. S. OKA, J.
DATE : JULY 25, 2006.

P.C.:

1. Heard the Advocates appearing for the parties. The Appellant has placed on record a compilation containing copies of the pleadings and the documents which are on record of the Trial Court.

2. The Appellant is the Plaintiff in a suit simplicitor for injunction filed in City Civil Court. The Appellant claims to be owner of eight galas on the ground floor of the building known as Everest Shopping Centre, Nehru Road, Santacruz (E), Mumbai. In the plaint the Appellant has asserted that since 1977 he has been applying for grant of permission to construct weather-shed in front of the premises and permissions have been granted from time to time. The Appellant

has stated that weather-shed was regularly constructed with the permission of the Respondent-Municipal Corporation. The suit is filed on apprehension that the Respondent-Corporation is threatening to demolish the weather-shed. The contention of the Appellant was that weather-shed is assessed to Municipal Taxes. In paragraph No.10 of the plaint it is asserted that the officers of the Respondent-Corporation came to the site on 23rd November, 2000 and threatened to demolish the weather-shed. A contention is raised in the plaint that a structure which is assessed to the municipal taxes for more than two years cannot be demolished save and except by following a due process of law. A prayer in the suit is for perpetual injunction restraining the Corporation from demolishing the weather-shed in dispute. The Respondent-Corporation contested the suit by filing a written statement. The learned Trial Judge dismissed the suit by holding that the weather-shed is constructed without obtaining permission of the Respondent-Corporation and hence the same cannot be tolerated.

3. The learned Counsel appearing for the Appellant submitted that only a limited relief is sought in the suit restraining the Respondent from demolishing the weather-shed without following due process of law. He submitted that permission for construction of the weather-shed was granted by the Respondent-Corporation. He submitted that in any event the Respondent-Corporation is not expected to take law into its own hands and remove the weather-shed without following due process of law. The learned Advocate for the Respondent pointed out that the weather-shed is completely unauthorised and the Appellant is not entitled to any relief. He pointed out that the suit structure is a large strucutre admeasuring more than 600 sq. feet.

4. I have considered the submissions. The learned Counsel appearing for the Appellant placed reliance on permission dated 21st June, 2000 granted to the Appellant by the Respondent-Corporation. Perusal of the said permission shows that the Respondent-Corporation granted permission to erect a monsoon shed having area of 63 sq.meter and permission

was granted subject to condition that the shed should be of temporary nature and the permission was granted only till 31st October, 2000. If this is the permission relied upon by the Appellant, it is obvious that the monsoon shed cannot be tolerated. The permission which is granted is only for a temporary period up to 31st October, 2000. Thereafter, there is no permission granted by the Respondent-Corporation to continue the existence of the shed. It is not a simple weather-shed as sought to be made out as the area of the shed mentioned in the permission dated 21st June, 2000 is about 63 sq. meter which is more than 600 sq. ft. Thus, it is obvious that the existence of the shed as of today is completely unauthorised and illegal. Grant of perpetual injunction under section 38 of the Specific Relief Act, 1963 is always discretionary. The discretion has to be exercised on equitable grounds. The discretion cannot be exercised in favour of the Appellant as the structure which is subject matter of the suit is completely unauthorised and illegal. Therefore, no fault can be found in the decree of dismissal of the suit passed by the Trial Court.

5. Hence, Appeal is dismissed. No order as to costs.

6. At this stage, the learned Counsel for the Appellant prays that time may be granted till end of monsoon to remove the shed. The said request cannot be acceded to as while granting the permission in the year 2000 the Appellant has given an undertaking to remove the shed after the expiry of temporary permission granted in favour of the Appellant. Time of only four weeks from today is granted to the Appellant to remove the shed. If within the period of four weeks from today the shed is not removed, the Respondent-Corporation will be free to remove the same without notice to the Appellant. Notwithstanding the dismissal of the Appeal, it will be open for the Appellant to apply for temporary permission to construct a monsoon-shed.

JUDGE